

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Criminal Action No. 08-56-GMS
	:	
DARRIN BURNS,	:	
	:	
Defendant.	:	

DEFENDANT'S MOTION TO SUPPRESS
PHYSICAL AND TESTIMONIAL EVIDENCE

AND NOW comes the defendant, Darrin Burns, by his attorney Luis A. Ortiz of the Federal Public Defender's Office, and pursuant to the Fourth and Fifth Amendments of the United State Constitution, files this Motion to Suppress Physical and Testimonial Evidence.

1. Count One of the indictment charges that on or about March 14, 2008, defendant Darrin Burns possessed with intent to distribute cocaine base, in violation of 21 U.S.C. §§ 841(a)(1) and (b)(1)(C).

2. Count Two charges that in furtherance of the drug trafficking crime alleged in Count One, defendant knowingly possessed a firearm, in violation of 18 U.S.C. § 924(c).

3. Identifying the same firearm, Count Three charges possession of a firearm by a convicted felon, in violation of 18 U.S.C. § 922(g)(1).

4. The above charges arise from a warrantless search, seizure and arrest which occurred on March 14, 2008.

5. The government has provided defense counsel with a copy of a Wilmington Police report generated after the search, seizure and arrest of March 14, 2008.

6. Without stipulating to the facts alleged by the government, the police report and the criminal complaint allege as follows:

- a. that police approached defendant on suspicion of loitering;
- b. that defendant fled when he saw police approaching;
- c. that defendant abandoned a gun, drugs and money while fleeing police;
- d. that police placed defendant under arrest; and
- e. that defendant was given his Miranda warnings, and thereafter confessed to possessing the gun, drugs and money.

7. Defendant moves to suppress the gun, drugs and money on the ground that they were secured as the result of a warrantless search and seizure in violation of the Fourth Amendment.

8. Defendant moves to suppress the statements to police, on the ground they are the tainted fruits of the Fourth Amendment violation, and on the ground that defendant did not knowingly and voluntarily waive his Fifth Amendment Miranda rights.

9. The Supreme Court has held that individuals do not have a reasonable expectation of privacy in abandoned property, and that abandoned property is therefore outside the protections of the Fourth Amendment. Abel v. United States, 362 U.S. 217, 241, 80 S.Ct. 683, 698 (1960).

10. When the government seizes evidence without a warrant, and seeks to justify the seizure on grounds of abandonment, “[p]roof of intent to abandon property must be established by clear and unequivocal evidence.” United States v. Fulani, 368 F.3d 351, 354 (3d Cir. 2004).

11. In addition, when the government seeks to introduce inculpatory statements taken while the defendant was in police custody, the government has the burden of proving that the defendant knowingly, voluntarily and intelligently waived his Fifth Amendment Miranda rights. Colorado v. Connelly, 479 U.S. 157, 168, 107 S.Ct. 515, 522 (1986).

WHEREFORE, it is respectfully requested that an evidentiary hearing be scheduled, and that Defendant's Motion to Suppress Physical and Testimonial Evidence be GRANTED.

Respectfully submitted,

/s/ Luis A. Ortiz
Luis A. Ortiz, Esquire
Assistant Federal Public Defender
704 King Street, Suite 110
Wilmington, Delaware 19801
(302) 573-6010
ecf_de@msn.com
Attorney for Defendant Darrin Burns

Date: May 13, 2008

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

UNITED STATES OF AMERICA,	:	
	:	
Plaintiff,	:	
	:	
v.	:	Criminal Action No. 08-56-GMS
	:	
DARRIN BURNS,	:	
	:	
Defendant.	:	

ORDER OF COURT

AND NOW, this _____ day of _____, 2008, upon consideration of Defendant Burns' Motion to Suppress Physical and Testimonial Evidence, it is hereby ordered that the motion is GRANTED. The gun, drugs and money, and defendant's statements to police, are hereby ordered SUPPRESSED.

By the Court,

Honorable Gregory M. Sleet
Chief Judge